

## DEPARTMENT OF TAXATION AND FINANCE

## BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Applications of :  
OVERLAND REALTY, INC. :  
for revision or refund of franchise : Hearing Case No. 6567  
tax under Article 9A of the Tax Law :  
for the calendar year 1963. :

On March 15, 1968 an assessment was issued against subject taxpayer computed as follows:

Entire net income per original assessment	23,869.49
Add: brokerage commission expense disallowed	107,500.00
Adjusted entire net income	131,369.49
Tax at 5½%	7,225.32
Tax originally assessed	1,312.82
Added tax	5,912.50
Statutory penalty	3,133.63
Total amount due	9,046.13

The brokerage commission was disallowed, based on a report of examination by the Special Investigations Bureau, on the grounds that the payment was made for a purpose contrary to public policy. Taxpayer had originally signed an audit extension waiver to March 15, 1968. The report of examination recommended issuance of the assessment on that date because of taxpayer's refusal to grant another extension waiver.

This matter arose in connection with the trial of a John P. Hannon, real estate broker, who was convicted of conspiracy in a Buffalo Court on September 12, 1966. His appeal is pending.

The president of the taxpayer, Mr. Wells, was named in the indictment as a co-conspirator but not as a defendant. Mr. Wells was the preincipal witness in the case. His testimony brought out that Overland Realty, Inc. had an option to purchase a garage in Buffalo for \$650,000.00. The taxpayer entered into an agreement with Mr. Hannon offering to pay him a brokerage fee of \$107,500 if he could sell the property for \$800,000. Mr. Hannon conducted negotiations with the comptroller of the City of Buffalo, George D. O'Connell, and its real estate director, Wilbur P. Trammell, and eventually effected a sale to the City of Buffalo for \$800,000. Thereupon, the taxpayer paid Hannon the brokerage fee of \$107,500 as agreed.

O'Connell and Trammell were indicted as conspirators but were never brought to trial. The presiding judge dismissed the charges against them because of insufficient evidence.

The Buffalo District Office examiner who is on liason assignment with the Internal Revenue Bureau in that city advised that the Federal agents surveyed the return of Overland Realty, Inc. for 1963 and felt no additional tax was in prospect and accordingly, no audit was made.

It is the usual policy of the Department to conform with and follow Federal income. The net profit realized by the taxpayer was \$42,500 (\$150,000 gain less brokerage fee of \$107,500) and was reflected in the entire net income of \$23,869.49 reported on the return. The net

profit would not have materialized if the brokerage expense had not been incurred. We believe it would be practically impossible to sustain a position that the expense of \$107,500 should be disallowed. Accordingly, it is recommended that we follow our usual policy of conforming to Federal income, and cancel the added tax and statutory penalty of \$9,046.13, which has not been paid.

/s/

W. F. SULLIVAN

Chairman

/s/

D. H. GILHCOLY

/s/

J. J. GENEVICH

JJG:PL  
6/21/68

Approved  
E. A. DORAN

Approved  
SAMUEL E. IEPLER  
6/26/68

Approved  
A. BRUCE MANLEY  
7/16/68